

## **REMARKS**

Applicant respectfully thanks the Examiner for the consideration provided to this application, and respectfully requests reconsideration of this application.

Each of claims 1, 67-71, 76, 85 has been amended for at least one reason unrelated to patentability, including at least one of: to explicitly present one or more elements, limitations, phrases, terms and/or words implicit in the claim as originally written when viewed in light of the specification, thereby not narrowing the scope of the claim; to detect infringement more easily; to enlarge the scope of infringement; to cover different kinds of infringement (direct, indirect, contributory, induced, and/or importation, etc.); to expedite the issuance of a claim of particular current licensing interest; to target the claim to a party currently interested in licensing certain embodiments; to enlarge the royalty base of the claim; to cover a particular product or person in the marketplace; and/or to target the claim to a particular industry.

Claims 1, 15-17, 67-72, 74-76, and 82-88 are now pending in this application. Claims 1, 67-70, and 85 are in independent form.

### **I. The Objection to the Abstract**

The present Office Action objected to the Abstract. This objection is respectfully traversed for lack of legal basis.

The legal requirements for an abstract are enumerated in 37 C.F.R. 1.72(b), which states:

[a] brief abstract of the technical disclosure in the specification must commence on a separate sheet, preferably following the claims, under the heading “Abstract” or “Abstract of the Disclosure.” The sheet or sheets presenting the abstract may not include other parts of the application or other material. The abstract in an application filed under 35 U.S.C. 111 may not exceed 150 words in length.

Aspirations and/or desires of the USPTO, such as presented in the MPEP regarding what an Abstract “should” comprise, are not legally binding.

Applicant respectfully submits that the Abstract of the present Application as originally submitted was less than 150 words in length and thus was “brief”, pertained to the “technical disclosure”, commenced on a separate sheet under the heading “Abstract”, and the sheet on which it appeared did not include other parts of the application or other material. Thus, the

Abstract of the present Application as originally submitted fully complies with the requirements of 37 C.F.R. 1.72(b). For at least these reasons, Applicant respectfully requests a withdrawal of the objection to the Abstract.

## II. The Enablement Rejections

Claim 76 was rejected under 35 U.S.C. 112, first paragraph, as allegedly failing to comply with the enablement requirement, and thus was asserted to be unpatentable.

Without acquiescing to the present Office Action's position, this rejection is respectfully traversed as moot in light of the current amendment to claim 76. Consequently, reconsideration and withdrawal of this rejection is respectfully requested.

## III. The Indefiniteness Rejections

Each of claims 69, 71, 72, 74-76, and 82 was rejected under 35 U.S.C. 112, second paragraph, as being indefinite, and thus was asserted to be unpatentable.

These rejections are respectfully traversed.

Regarding indefiniteness rejections, the Federal Circuit has held that the law is clear that **if the claims, read in light of the specification, reasonably apprise those skilled in the art of the use and scope of the invention**, and if the language is as precise as the subject matter permits, the claims are definite under Section 112, second paragraph. *Shatterproof Glass Corp. v. Libbey-Owens Ford Co.*, 758 F.2d 613, 624, 225 USPQ 634 (Fed. Cir. 1985), *cert. dismissed*, 474 U.S. 976 (1985).

The present Office Action fails to provide any specific allegation that any claim, or even any specific claim term, when read in light of the specification, would not reasonably apprise those skilled in the art of the use and scope of the invention. The present Office Action asks at Page 5, "it is not clear what is claimed a 'solution' or 'dispersion'?" Applicant respectfully submits that a person having ordinary skill in the art, when reading the claims in light of the specification, particularly at least paragraphs 0009-0012, would find "an aqueous solution comprising a dispersion" clear. Consequently, reconsideration and withdrawal of these rejections is respectfully requested.

#### **IV. The Antecedent Basis Rejections**

Each of claims 71 and 76 was rejected under 35 U.S.C. 112, second paragraph, as lacking sufficient antecedent basis and thus was asserted to be unpatentable.

Without acquiescing to the present Office Action's position, each of these rejections is respectfully traversed as moot in light of the current amendment to the corresponding claim. Consequently, reconsideration and withdrawal of these rejections is respectfully requested.

#### **V. The Anticipation Rejections**

Each of claims 69, 71-72, 74-76, and 82 was rejected as anticipated, and thus unpatentable, under 35 U.S.C. 102(b). In support of the rejection, various portions of U.S. Patent 6,199,318 ("Stewart"), and/or U.S. Patent 5,653,054 ("Savignano") were applied.

Without acquiescing to the present Office Action's position, each of these rejections is respectfully traversed as moot in light of the current amendment to the corresponding claim. Specifically, claim 69, from which each of claims 71-72, 74-76, and 82 ultimately depends, states, *inter alia*, yet no substantial evidence has been presented that the applied portions of the cited references teach, "the nanoparticles comprising an internally substantially crosslinked polymer comprising the at least one hydrophobic substituent and the N-isopropyl acrylamide, wherein the polymer releases heat over a range of dropping ambient temperatures beginning at 4.4 degrees C".

Consequently, reconsideration and withdrawal of these rejections is respectfully requested.

#### **VI. The Obviousness Rejections**

Each of claims 69, 71-72, 74-76, and 82 was rejected under 35 U.S.C. 103(a) as being obvious, and thus unpatentable, over various combinations of U.S. Patent 6,199,318 ("Stewart"), U.S. Patent 5,653,054 ("Savignano"), U.S. Patent 6,180,562 ("Blum"), and/or U.S. Patent 4,975,375 ("Haruta").

Without acquiescing to the present Office Action's position, each of these rejections is respectfully traversed as moot in light of the current amendment to the corresponding claim. Specifically, claim 69, from which each of claims 71-72, 74-76, and 82 ultimately depends,

states, *inter alia*, yet no substantial evidence has been presented that the applied portions of the cited references teach, “the nanoparticles comprising a an internally substantially crosslinked polymer comprising the at least one hydrophobic substituent and the N-isopropyl acrylamide, wherein the polymer releases heat over a range of dropping ambient temperatures beginning at 4.4 degrees C”.

Consequently, reconsideration and withdrawal of these rejections is respectfully requested.

### **CONCLUSION**

It is respectfully submitted that the application is in clear condition for allowance. Reconsideration, withdrawal of all grounds of rejection, and issuance of a Notice of Allowance are earnestly solicited.

The Office is hereby authorized to charge any additional fees or credit any overpayments under 37 C.F.R. 1.16 or 1.17 to Deposit Account 50-2504. The Examiner is invited to contact the undersigned at 434-972-9988 to discuss any matter regarding this application.

Respectfully submitted,

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